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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/323,135	06/01/1999	CHRISTIAN LAROQUE	Q054622	8820
23373	7590	10/19/2005		
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER PHILPOTT, JUSTIN M	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*AK*

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/323,135	Applicant(s) LAROQUE ET AL.	
	Examiner Justin M. Philpott	Art Unit 2665	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

*Alpus H. Hsu*

**ALPUS H. HSU**  
**PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

First, applicant argues (pages 2-4) that in the previous office action Examiner has improperly required applicant's originally filed specification to recite exact claim language of the added limitations to claims 12 and 13, whereby applicant refers to the office action stating "the specification is completely void of any phrasing or similar language". However, applicant has misrepresented the passage in the previous office action by failing to account for the remainder of the sentence applicant has cited. Specifically, the previous office action states, "the specification is completely void of any phrasing, or similar language or figures which \*indicate\*, that at the time of the invention, applicant contemplated the limitations of claims 12 and 13" (emphasis added - the key word being "indicate"). Examiner maintains the position that applicant's invention as originally filed (including the originally filed specification, originally filed claims, and originally filed figures) does not indicate that at the time of the invention applicant contemplated the limitations of later added claims 12 and 13. MPEP clearly supports this position, wherein, according to 35 U.S.C. 112, first paragraph, a claim cannot contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention". That is, the subject matter discussed in the final office action regarding claims 12 and 13 is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Accordingly, applicant's argument is not persuasive.

Additionally, applicant argues (pages 4-6) that Hickey does not teach limitations recited in applicant's claim 1. However, Examiner maintains the position that the broadly recited limitations in claim 1 are anticipated by Hickey for the same reasons discussed in the final office action mailed June 23, 2005. Applicant's argument may be persuasive if claim 1 is amended to distinguish applicant's invention from Hickey, e.g., to recite that the signaling configuration is selected based upon which of a plurality of types of channels are accessible to the coupler. As presently drafted, however, Hickey anticipates claim 1, and accordingly applicant's arguments to the contrary are not persuasive.